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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

In re EVELYN S., et al., Persons  
Coming Under the Juvenile Court  
Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

MARTIN S.,

Defendant and Appellant.

B295764

(Los Angeles County  
Super. Ct. No. 18CCJP08212A-B)

APPEAL from orders of the Superior Court of Los Angeles  
County. D. Brett Bianco, Judge. Affirmed.

Matthew Joseph Hardy III, under appointment by the  
Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,  
Assistant County Counsel, and Veronica Randazzo, Deputy  
County Counsel for Plaintiff and Respondent.

Appellant Martin S. (father) appeals from the juvenile court's findings and orders, under Welfare and Institutions Code section 300, subdivisions (a) and (b),<sup>1</sup> establishing dependency jurisdiction over his daughters, Evelyn (born 2010) and Leah (born 2011). Father also challenges the dispositional order removing the children from his custody. We affirm the juvenile court's orders.

## **BACKGROUND**

### **The family's prior child welfare history**

On July 29, 2012, the Los Angeles Department of Children and Family Services (the Department) received a referral alleging the children were at risk of emotional and physical abuse. The referral alleged that on July 28, 2012, father and the children's mother, Alejandra M. (mother), were involved in a physical altercation in which mother attacked father and struck Leah on the head. The referral further alleged father was holding Leah when mother used her fists to strike father in the torso and groin.

Mother told the investigating social worker that she, not father, had been holding Leah during the incident and that she did not hit the child. Mother said she was arrested because she struck father, not Leah. Law enforcement officers said that mother and father had differing versions about the incident but that mother had not hurt Leah in any way. The Department concluded the allegations were unfounded and closed the referral.

### **Father's prior child welfare history**

On February 6, 2018, the Department received a referral alleging that father's daughter, Emma, and stepson Joel were

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

victims of abuse. The referral alleged that father was involved in a violent physical altercation with Emma's and Joel's mother, Noemi F. Noemi told father she was leaving him, and father responded by blocking the front door. He then picked up one-year-old Emma and carried her into the bathroom. Noemi followed father, trying to get Emma back. A physical altercation ensued in which father pushed Noemi into a bed and relinquished Emma. When eleven-year-old Joel entered the room, father grabbed him by the neck and punched him in the face multiple times. Noemi intervened and father punched her in the back of the head several times. Father then reached under the bed, grabbed a machete, and began pacing back and forth from the bedroom to the living room. Noemi and Joel locked themselves in the bathroom and Joel climbed through a window to get help. Law enforcement eventually responded. Joel sustained bruises, lacerations, and swelling to his right eye and was transported to a hospital.

The police report for the incident described father as six feet tall and 200 pounds, Joel as four feet tall and 70 to 80 pounds, and Noemi as five feet two and between 150 and 160 pounds. Father told the responding officers that he "blacked out" and did not remember anything except Noemi and Joel following him about. He said he did not intend to hit Joel.

Noemi received an emergency protective order, and father was arrested and charged with spousal abuse and assault on a child. Joel and Emma were subsequently detained from both Noemi and father.

During the Department's investigation of the incident, Noemi and the children relocated to Sacramento. The

investigating social worker determined the allegations of physical and emotional abuse were inconclusive and closed the referral.

On April 19, 2018, the Department received a second referral alleging emotional abuse of Joel by father and failure to protect and general neglect by Noemi. Noemi and the children had returned from Sacramento on March 12, 2018. Since then, father had twice contacted the family, in violation of the restraining order, but Noemi did not report the incidents to the police. The first incident occurred at a Walmart, where Joel reported seeing father nearby while the family was shopping. The second incident occurred on April 13, 2018, when father was present inside the family's new home. Noemi reportedly told Joel that she did not want father arrested again because he would be unable to work and to support his children while incarcerated.

On August 30, 2018, the Department received another referral alleging general neglect of Joel and Emma by Noemi and father. The referral alleged that Noemi, Joel, and Emma had moved into the same apartment complex where mother, Leah, and Evelyn lived, and that father was in violation of the restraining order by living in the home with Noemi, Joel, and Emma. Noemi had failed to appear at the court proceedings against father and his criminal case was dismissed. The investigating social worker determined that the allegation of general neglect was substantiated, and the children were detained from Noemi and father.<sup>2</sup>

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<sup>2</sup> On October 28, 2018, the Department filed a section 300 petition on behalf of Joel and Emma. That petition had not been adjudicated at the time the petition was filed in this case on behalf of Evelyn and Leah.

**Detention and section 300 petition**

On October 24, 2018, the Department received a referral alleging Evelyn and Leah were at risk of emotional abuse. The investigating social worker had learned that Emma and Joel had been detained from father and Noemi because of a domestic violence incident, that mother and father had a history of domestic violence, and that father and Noemi appeared to be in a current relationship.

After unsuccessful attempts to contact mother, the social worker visited Evelyn's and Leah's school on December 3, 2018. Leah told the social worker that she lives with mother and mother's male companion Steve. She said father lives in a separate home and she had last visited with him a week ago. Both Leah and Evelyn denied being afraid of father and said they felt safe in their home.

On December 7, 2018, the social worker interviewed mother in her home. Evelyn and Leah were with father, who had joint custody of the children. Mother denied any knowledge of the allegations against father regarding Joel and Emma. She said that during her relationship with father, there had been a domestic violence incident that involved physical and verbal abuse by father. Mother agreed to a safety plan and said she would seek to modify the custody order to obtain sole custody of Leah and Evelyn and monitored visitation for father.

On December 20, 2018, mother arrived at the Department's offices and reported that father was present in the lobby. Father had threatened her, saying he was going to destroy her life. Mother explained that she had recently served father with custody documents and that a family law hearing had been set. Mother further stated that father had recently been released

from custody, but she did not know why he had been arrested. She said she was afraid for Leah and Evelyn but felt constrained by the existing family law order granting father joint custody.

The social worker contacted father by telephone, explained mother's concerns, and asked father if he would agree to refrain from discussing case issues with the children. Father became combative and said he was going to tell the children everything and inform them that the Department was trying to ruin their lives. When father continued to raise his voice, the social worker terminated the call.

Father called the social worker back later that day and apologized. He said he knew he had made mistakes and that he was participating in services.

Later that same day, mother called the social worker and reported that father was sending her threatening text messages. Mother said she believed the children were in danger and that she had picked them up from school to keep them safe. Approximately 25 minutes later, mother again called the social worker and said that father had contacted the police, and that an officer was at her home. The social worker spoke to the officer and explained that the Department was seeking a warrant to detain the children from father.

On December 21, 2018, the Department obtained a warrant authorizing removal of Leah and Evelyn from father. Later that day, father arrived unannounced at the Department's offices and demanded to see a supervisor, who met with father in a private interview room. Father appeared agitated and upset and demanded to know why the children had been detained from him. As the supervisor explained the reasons for the detention, father stood up and began to yell at the supervisor. Father's behavior

caused a security guard to approach. When the supervisor failed to calm father down, she left the room. The security guard then escorted father from the premises.

On December 26, 2018, the Department filed a section 300 petition alleging that father's physical abuse of Joel and Noemi placed Evelyn and Leah at risk of serious physical harm. On December 27, 2018, the juvenile court ordered Evelyn and Leah detained from father, accorded father monitored visits, and ordered father to have no contact with mother.

### **Jurisdiction and disposition**

In February 2019, the Department reported that Evelyn and Leah continued to state that they were not afraid or uncomfortable with father. Evelyn further stated that she missed Joel, Emma, and Noemi.

Mother told the social worker that she shared custody of Evelyn and Leah with father. She said that father had the children from Wednesday through Friday, and on alternate weekends. After mother sought to change the custody order, father verbally abused her during an encounter at the Department's offices. Mother further reported that Evelyn had telephoned her during a recent visit with father and told mother that she hated her.

Father admitted the altercation with Noemi. He said Joel and Noemi were following him around while he was holding Emma and that they cornered him in the bathroom. Father denied intentionally hitting Joel multiple times. He said he accidentally hit Joel once when Joel got in the way. Father admitted owning a machete but denied brandishing it during the altercation with Noemi. He accused Noemi of placing it on the

bed to implicate him. Father said he resented Noemi and felt he had lost his “whole life” because of her.

At the February 7, 2019 adjudication hearing, the juvenile court admitted into evidence the Department’s reports, and letters father submitted from ACR Family Services indicating he had attended 13 group sessions out of a 52-week domestic violence program and 13 out of 16 sessions of a parenting education program.

After hearing argument from the parties, the juvenile court amended the petition by removing the allegations that mother had failed to protect the children, and then sustained the petition as amended. The court heard further argument from the parties regarding disposition and ordered the children removed from father’s custody and released to mother. The court accorded father monitored visits and ordered him to participate in a domestic violence program, anger management, and individual counseling to address case issues.

This appeal followed.

## **DISCUSSION**

### **I. Standard of review**

We review the juvenile’s court’s jurisdictional findings under the substantial evidence standard. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193 (*Heather A.*)). Under this standard, we review the record to determine whether there is any reasonable, credible, and solid evidence to support the juvenile court’s conclusions, and we resolve all conflicts in the evidence and make all reasonable inferences from the evidence in support of the court’s orders. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) We review the juvenile court’s selection of a



dispositional order for a minor for abuse of discretion. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.)

## **II. Jurisdiction**

Section 300, subdivision (a) accords the juvenile court jurisdiction over a child if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent.”

Section 300, subdivision (b) accords the juvenile court jurisdiction over a child if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child.”

Substantial evidence supports the juvenile court’s findings that father’s violent behavior placed the children at substantial risk of harm. There was evidence that father was physically and verbally abusive toward mother, ending their relationship in 2012. In February 2018 father engaged in a violent altercation with Noemi while Emma and Joel were present. Father grabbed Joel by the neck and punched him repeatedly in the face; punched Noemi several times in the back of the head; and brandished a machete while pacing agitatedly around the home.

That Leah and Evelyn were not present during the February 2018 domestic violence incident does not remove them from risk of harm. Their absence from the home that day was fortuitous, as father had joint custody and Leah and Evelyn stayed with him on Wednesdays, Thursdays, Fridays, and every other weekend. Domestic violence in the children’s home is sufficient to support jurisdiction under section 300, subdivisions (a) and (b). (*In re T.V.* (2013) 217 Cal.App.4th 126, 134-135; *In re*

*Giovanni F.* (2010) 184 Cal.App.4th 594, 600; *Heather A.*, *supra*, 52 Cal.App.4th at p. 194.)

Father's claim that his violent behavior during the February 2018 incident was an isolated event is contradicted by the record. Mother reported that father was physically and verbally abusive during their relationship. During the instant case, father repeatedly threatened mother when he learned of her intent to modify the custody order. Father was combative when a social worker asked him to refrain from discussing case issues with the children. His threatening behavior during a December 2018 meeting with a Department supervisor prompted a security guard to respond and to eventually escort father off the premises.

Father's refusal to take responsibility for his actions is also a relevant factor in assessing the risk of future harm. (*In re A.F.* (2016) 3 Cal.App.5th 283, 293.) When interviewed by the police after the February 2018 domestic violence incident, father claimed to have "blacked out" and could not remember what happened. Later, father blamed Noemi and Joel for "cornering" him in the bathroom and claimed that Joel was hit because he got in the way. Father accused Noemi of placing the machete on the bed in order to implicate him.

Substantial evidence supports the juvenile court's jurisdictional findings and orders.

### **III. Disposition**

Section 361, subdivision (c), authorizes the juvenile court to remove a child from the physical custody of a parent with whom the child resides at the time the petition was filed if the court finds by clear and convincing evidence, that there is or would be a substantial danger to the physical health, safety, protection, or

physical or emotional well-being of the child and there are no other reasonable means of protecting the child. (§ 361, subd. (c).)<sup>3</sup>

Substantial evidence also supports the dispositional order removing the children from father's custody. There was evidence that father was physically and verbally abusive toward mother, resulting in the termination of their relationship. Father's violent behavior during the February 2018 domestic violence incident resulted in substantial injuries to Joel and caused Joel and Noemi to fear for their lives. Father verbally threatened mother during this case and sent her threatening text messages. He was confrontational and combative when interacting with the Department's social worker and disregarded admonitions against discussing case issues with the children. Father's threatening behavior during a meeting with a Department supervisor caused a security guard to respond and to escort father off the premises. We are unpersuaded by father's argument that the juvenile court failed to consider other reasonable alternatives to removing the children from his custody. The record discloses no abuse of discretion.

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<sup>3</sup> Father claims he was a non-custodial parent and that the juvenile court's removal order is governed by section 361, subdivision (d). The record shows, however, that father had joint custody of the children at the time the petition was filed.

**DISPOSITION**

The jurisdictional and dispositional orders are affirmed.

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\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
ASHMANN-GERST